IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 578 OF 1994

The State of Maharashtra ..Appellants

versus

Subhash Sadashiv Kopare ..Respondent

WITH

FIRST APPEAL NO. 579 OF 1994

The State of Maharashtra ..Appellants

versus

Jagdish M. Sardal & Anr. ..Respondents

Ms. Usha Kejariwal, AGP for the Appellants

Mr. R. S. Mhamane for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 28TH MARCH,2005

ORAL ORDER :

1. Heard learned AGP for the State and counsel for the Respondents in both the above appeals.

2. Both these appeals have been filed by the

State challenging the enhancement of compensation by the 2nd Jt. Civil Judge, Senior Division, Ratnagiri by common judgment or order dated 21.6.1993. This common judgment was given in two Land References. The notification in this case for acquisition of land of both the claimants was dated 7.4.1988. Award came to be passed on 31.3.1991. The SLAO awarded Rs.900/- per R for Warkas land and Rs.2/- for kharaba land. Being aggrieved the claimants filed Reference and they were awarded Rs.2,000/- per R by the Reference Court. Therefore the State has challenged the Order of the Reference Court by filing these two appeals.

3. It was contended by the learned AGP that in paragraph 13 of the impugned order, the court considered three sale instances which were subsequent to the Notification under Section 4 and that could not be the basis for fixing the compensation.

4. It is true that three sale instances dated 5.6.1989, 21.4.1989 and 24.4.1990 were considered by the Tribunal. But it is clear from the judgment that those three sale instances were not the only basis for enhancing the compensation. The Reference Court has observed and hold that those sale instances were subsequent to the notification under

Section 4. It is therefore clear that these three sale instances were not the basis for fixing the compensation.

5. In paragraph 14 of the judgment, the Reference Court appears to have referred to the Award where 41 sale instances commencing from 1986 to 1989 were considered. There were sale instances of 1987 where the price of the similarly situated land was Rs.2,000/- per R. If that is so, then the Reference Court was justified in fixing the compensation at Rs.2,000/- per R.

6. Further in the acquired land there is some kharab land for which SLAO has awarded Rs.2/- per R and the Reference Court awarded Rs.2,000/- at flat rate. That is not a proper order and approach. Kharaba land cannot be equated with cultivable land, therefore in view of the aforesaid facts, the appeal is required to be partly allowed. Compensation for cultivable land fixed at Rs.2,000/- per R, requires no interference. However, so far as Kharaba land is concerned, compensation has to be fixed at Rs.500/- per R. Therefore, I pass the following order :

ORDER

. Both the Appeals are partly allowed.

. Compensation awarded by the Reference Court and the rate fixed shall remain the same. However, so far as Kharaba land is concerned, the claimants will be entitled to Rs.500/- per R only. The order of the Reference Court shall stand modified to that extent only. No order as to costs of these Appeals.

28.03.2005 (D.G. DESHPANDE, J.)